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SEC Posts RAND Report on Investment Advisers and Broker-Dealers

On January 3, 2008, the SEC released a report from the RAND Corporation on "Investor and Industry Perspectives on Investment Advisers and Broker-Dealers." The accompanying press release quoted Chairman Cox as stating that "The report will assist the Commission's efforts to update our regulations to improve investor protections in today's new marketplace."

In the regulatory process leading to the 2005 adoption of a rule attempting to clarify the regulatory boundary between broker-dealers and advisers, questions and concerns had arisen about investors' perceptions of the differences between brokerage and investment advisory accounts, including the legal obligations of each type of account and the effect of titles and marketing practices on investor expectations. Accordingly, the SEC had commissioned the RAND Corporation to (1) examine the practices of investment advisers and broker-dealers in marketing and providing products and services to individuals and (2) evaluate investors' understanding of the differences between these two types of entities' products, services and obligations.

The Report concluded that the financial services industry is very heterogeneous, involving a wide variety of services, products and business structures, and that, in part because of this wide diversity, investors typically fail to distinguish between broker-dealers and investment advisers along the lines defined by federal law and regulation. Despite this confusion, however, investors expressed high levels of satisfaction with the services they received.

The 219-page report contains a wealth of empirical information, derived in the case of industry participants from previous published studies, regulatory filings, business documents obtained from the participants, and interviews, and in the case of individual investors from a 654-household survey and six focus groups. The purpose of the report was to provide the SEC with a factual basis for policy-making. Differing views as to how to respond to the data and other information in the report seem likely to develop among interested groups.

Reaction to the report was not long in emerging. On January 4, 2008, the day after the report's appearance, the Financial Planning Association, citing the potential for major regulatory change, the "enormous amount of confusion facing investors" as confirmed by the report, and the potential drawbacks of any "blended form of regulation of stockbrokers and advisers," asked the SEC to convene a roundtable of consumer and industry groups to discuss the report's findings.

If you would like more information about the foregoing or about the regulation of investment advisers generally, please feel free to contact the following Butzel Long attorneys:

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[1] The current version of the report, which is posted on the SEC's website, is a "pre-publication copy," which has been peer-reviewed and whose "text, data, findings and analysis are final." The formatted and proofread version is expected to be available in March 2008.

[2] Rule 202(a)(11)-1, "Certain Broker-Dealers Deemed Not to Be Investment Advisers," subsequently overturned by a March 2007 Court of Appeals decision. For further background see our October 2007 Investment Management Legal Alert.

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